

UNITED STATES OF AMERICA
UNITES STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-032-34-2180
LICENSE NO. 429923
Issued to: STEFAN J. PALMER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2022

STEFAN J. PALMER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1, now 5.30-1.

By order dated 6 May 1974, an Administrative Law Judge of the United States Coast Guard at Houston, Texas, suspended Appellant's seaman's documents for three months on twelve months' probation upon finding him guilty of inattention to duty. The specification found proved alleges that while serving as Third Mate on board the T/B IOS 3301 under authority of the document and license above captioned, on or about 19 February 1974, Appellant did wrongfully cause an oil spill into the navigable waters of the United States, the Houston Ship Channel, while said vessel was moored at Houston, Texas.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of two witnesses.

In defense, Appellant offered in evidence a vessel inspection report and his own testimony.

At the end of the hearing, the Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then entered an order suspending all documents, issued to Appellant, for a period of three months on twelve months' probation.

The entire decision and order was served on 20 May 1974. Appeal was timely filed on 20 June 1974.

FINDINGS OF FACT

On 19 February 1974, Appellant was serving as Third Mate on

board the T/B IOS 3301 and acting under authority of his license and document while the ship was in the port of Houston, Texas.

At the time in question, Appellant was the person in charge of loading Jet-A fuel onto the barge. At approximately 12:10 he shut down No. 2 starboard and center tanks with about two and eight feet of ullage respectively. He then stationed two men at the starboard valve, while he and another man topped off No. 2 port. This completed, he then ordered No. 2 starboard topped off. It overflowed almost immediately causing approximately ten gallons of oil to go over the side and into the Houston Ship Channel.

The block valve on No. 2 starboard tank was later found to have been clogged. Thus, while the port tank was being topped off, the starboard tank was, unknown to Appellant, still receiving cargo. He did not recheck the ullage prior to ordering the starboard tank topped off.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that

- (1) The charge and specification were inadequate;
- (2) The charge and specification failed to state a claim under R. S. 4450;
- (3) Immunity should have been granted under 33 U.S.C. 1321 (b)(5);
- (4) The Investigating Officer failed to meet his burden of proof; and
- (5) The Judge erred in finding that the block valve on No. 2 starboard tank did not cause the discharge.

APPEARANCE: Steven Mason, New Orleans

OPINION

I

It is manifestly clear that charges and specifications in these administrative proceedings need not meet the technical requirements of court pleadings. "It is now generally accepted that there may be no subsequent challenge of issues which are actually litigated, if there has been actual notice and adequate opportunity to cure surprise." Kuhn v. Civil Aeronautics Board, 183 F. 2d 839, 841 (D.C. Cir. 1950). A review of the entire record

in the instant case, particularly Appellant's attempt to prove that the discharge of oil resulted from matters beyond his control, indicates clearly that he was fully aware of the issues involved and that these issues were in fact litigated. The first basis for appeal is, therefore, without merit.

II

While Appellant neither explains nor cites support for his second basis of appeal, it is assumed that it is his contention either that causing an oil discharge is not inattention to duty or that inattention to duty is not a proper charge under R. S. 4450. Neither contention has merit. It is perfectly obvious that the person in charge of an oil loading operation, whose manifest duty it is to prevent oil discharges into the navigable waters of the United States and whose acts or omissions caused such a discharge, is guilty of inattention to duty. 46 U.S.C. 239(b) provides for the investigation of acts or incompetence or misconduct whether or not there has been a marine casualty or accident. The occurrence of an oil discharge properly prompts such an investigation and, according to 46 U.S.C. 239(g), a finding of misbehavior, unskillfulness or negligence will result in suspension or revocation of relevant seaman's documents. 46 CFR 5.05-20(a) (2) makes it clear that negligence and inattention to duty are virtually synonymous. Inattention to duty has long been considered a proper charge under R. S. 4450.

III

The oil discharge involved in this case was violative of the Federal Water Pollution Control Act, 33 U.S.C. 1321(b) (3). Appellant claims immunity under 33 U.S.C. 1321(b) (5) on the basis of the report required by that subsection having been made. Appellant's reliance is misplaced, however, because that provision applies solely to criminal cases and not to remedial administrative proceedings such as those under R. S. 4450. Furthermore, it does not appear from the record that Appellant either initiated or actually made the report required by 33 U.S.C. 1321(b) (5). Rather it appears that the report was made by an employee of Shell Oil Company on his own initiative.

IV

At the close of the Investigating Officer's case, Appellant moved for dismissal on the grounds that the former had failed to establish a prima facie case. The motion was denied and Appellant then presented the documentary portion of his defense. After the Judge had rendered a decision adverse to Appellant, his counsel requested and was granted the privilege of reopening the case to allow Appellant to testify. That having been done, the record must

now be considered as a whole. If the entire record contains substantial evidence of a reliable and probative nature to support the Judge's findings, it is irrelevant what portion of that evidence was presented by the Investigating Officer and by the Appellant respectively. See Decision on Appeal No. 1981 (HERMANSEN).

V

It is true that the Judge found that the block valve on No. 2 starboard tank did not cause the oil discharge. He did find, however, that the actual cause of the discharge was Appellant's failure to recheck the ullage in that tank prior to ordering it topped off. It cannot be said that this finding was not supported by substantial evidence of a reliable and probative nature. Appellant's own sworn testimony clearly supports this finding.

ORDER

The order of the Administrative Law Judge dated at Houston, Texas, on 6 May 1974, is AFFIRMED.

E. L. PERRY
Vice Admiral, U. S. Coast Guard
Vice Commandant

Signed at Washington, D. C., this 16th day of May 1975.

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